

October 1, 2014

**By ECF**

Hon. Paul G. Gardephe  
United States District Judge  
Thurgood Marshall United States Courthouse  
40 Foley Square  
New York, NY 10007

Re: Lockheed Martin Corporation v. MTA Capital Construction Co. and Metropolitan  
Transp. Auth., 09-CV-6033 (PGG) (GWG)

Dear Judge Gardephe:

We represent Defendants MTA and MTACC in the above-referenced actions. Pursuant to Your Honor's Order of September 25, 2014, we present below the order of witnesses for the first week of trial. Since each side has presented their respective cases-in-chief by declaration or affidavit, the witnesses are appearing for cross examination only and the order has been determined by the side presenting its direct case. Accordingly, the order has been provided to us by counsel for Lockheed Martin is as follows:

Judy Marks  
Barbara Humpton  
James Gaughan  
Bill Krampf  
Brad Lovitt  
James Williamson  
Gary Porter.

We also wish to raise two scheduling issues with the Court. The first involves MTA witness Craig Hughes. Mr. Hughes had scheduled a vacation several months ago which unfortunately coincides with the time MTA would be presenting its witnesses for cross (we anticipate beginning around October 21). On September 14, we proposed to counsel for Lockheed that we produce Mr. Hughes on October 16, which would be just slightly ahead of the anticipated close of the Plaintiff's case. To date, Lockheed has not consented to this accommodation. Accordingly, we ask that the Court intercede and order that Mr. Hughes be accommodated by allowing him to go forward as we requested.

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A second scheduling issue concerns the upcoming Jewish Holidays of Sukkot (October 9-10) and Shmini Atzeret/Simchat Torah (October 16-17). One of our attorneys, Marc Melzer, is observant and will be off those days. The reason we raise this is that he is responsible for cross examining two Lockheed witnesses, Roger Nebel and Louis DeStefano, now scheduled during the second week of the trial. We ask that those witnesses be scheduled no sooner than October 20 in order to accommodate Mr. Melzer's religious observance. This would still be within or very close to the time Lockheed would be presenting its witnesses anyway.

Finally, we wish to raise an issue concerning one of the witnesses on Lockheed's list. Lockheed has listed its electrical subcontractor, Five Star Electric ("FSE"), as a witness for its case. We have recently learned that the witness will be Michael Gress, who was FSE's Project Executive. The parties have already agreed to use Mr. Gress's deposition transcript in lieu of his having to appear, and designations from that transcript along with accompanying exhibits are before the Court. Lockheed's counsel was present at that deposition. If Lockheed's purpose in having Mr. Gress appear is to present documents not already part of the discovery record, and to give related testimony, such documents and testimony have never been disclosed to MTA. Lockheed previously represented that it would submit a declaration from an FSE witness in July but never did so. We are thus faced with learning of the nature of the testimony and the documents in question at trial. We object to this and ask that Mr. Gress be precluded from testifying.

Thank you for your consideration of these matters.

Respectfully submitted,



Ira J. Lipton

cc: Michael Chartan, Esq. (by email)  
Adam Friedman, Esq. (by email)